

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number 06-20172
Honorable Thomas L. Ludington

PHILLIP GIANFORTUNA,

Defendant.

**ORDER DIRECTING RESPONSE TO DEFENDANT'S PRO SE MOTION TO
COMPEL DEFENSE COUNSEL TO PROVIDE A COPY OF THE TRIAL RECORD**

Defendant entered a guilty plea to one count of drug trafficking in violation of 21 U.S.C. §§ 846 & 841(b)(1)(A), and was sentenced to 140 months in prison on September 9, 2008. [Dkt. # 206 & 231]. Defendant filed a notice of appeal [Dkt. # 233] on September 18, 2008. The appeal was dismissed [Dkt. # 269] by the Sixth Circuit on April 23, 2009 because Defendant waived his right to appeal as part of his plea agreement and the sentence imposed was within the range he agreed to when the plea was entered. Now before the Court is Defendant's pro se motion to compel his attorney, George C. Bush, to provide Defendant with a complete copy of the record at Defendant's expense so that Defendant may pursue collateral relief pursuant to 28 U.S.C. § 2255.

Defendant may be entitled to a copy of the transcripts of the plea hearing and sentencing hearing at government expense if he can show that a collateral appeal pursuant to § 2255 would not be frivolous, but that is not what he has requested. 28 U.S.C. § 753(f); *Smith v. United States*, 421 F.2d 1300 (6th Cir. 1970). Rather, he has asked his attorney to provide him with a complete copy of the attorney's case file at Defendant's own expense. He has included with this request a copy of a letter delivered via certified mail to his attorney on September 30, 2009, requesting a copy of his case file. Defendant asserts that Mr. Bush has not responded to the letter.

Defendant has not provided legal authority to support his request, and the Court is hesitant to meddle in the relationship between an attorney and his client. Moreover, another court in this district has recently denied a very similar motion. *See United States v. Dale*, No. 92-81127-32, 2009 WL 3334884 (Oct. 15, 2009). However, in light of the fact that Defendant has offered to pay the costs of providing the record and Mr. Bush has apparently not responded to the letter request or the motion filed by his client, the Court finds it necessary to direct Mr. Bush's response before resolving the motion.

Accordingly, it is **ORDERED** that attorney George C. Bush is directed to respond to his client's pro se motion on or before **January 4, 2010**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: December 14, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on December 14, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS